UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,818	12/31/2001	Robert L. Popp	KCC 4771	9058

321 7590 10/24/2003

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER	
REICHLE, KARIN M	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 10/24/2003.

09

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/038,818	POPP ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on th cover she t with the corr spondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 August 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 December 2001* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4, 5, 7* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group 1, claims 1-13, in Paper No. 8 is acknowledged.

2. Claims 14-18 drawn to the nonelected invention were canceled.

Specification

3. The FAX of August 8, 2003 is of extremely poor legibility. A legible copy of such response should be filed in the next response, if any.

Drawings

4. The drawings are objected to because in Figures 1 and 4, the line from 42 does not extend all the way to the structure it denotes. In Figure 2, the upper left 66 does not denote the proper structure. In Figure 3, the rightmost 46 should clearly be shown as the numeral 46. In Figure 6, the text should be avoided, i.e. numbers used instead and the text and numbers explained in the textual description of the invention. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 1-

13, e.g. the laminate, its layers, the neck stretched layer, the pregathered layer, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

6. The abstract of the disclosure is objected to because the abstract is too short, i.e. should be between 50 and 150 words in length. Also "garment" would be in better form if changed to --pants-- or --article--. Correction is required. See MPEP § 608.01(b).

7. The disclosure is objected to because of the following informalities: what is 78 in Figure 3?

Appropriate correction is required.

8. The use of the trademark LYCRA(R)(page 27, line 23) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be shown in all capital letters or with the trademark symbol but not both.

Claim Objections

9. Claims 10-13 are objected to because of the following informalities: in claim 10, line 5 and claim 13, line 4, "the" should be --a--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

10. Claims 4-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear whether a subcombination of a fastening system as set forth in the preambles of claim 4 and 7 or the combination of a fastening system and garment as set forth in the claim body of claims 4 and 7 is being claimed.

Claim Language Interpretation

11. "Neck-stretched" is defined as set forth on page 9, lines 1-3. "Stretch bonded" is defined as set forth on page 9, line 29-page 10, line 1. "Stretch bonded laminate" is defined as set forth on page 10, lines 5-8. Since Applicant has not defined "cross machine direction" or "machine direction" specifically and such could be used to describe 1) directions of the component alone during manufacture, 2) directions of the article or garment alone during manufacture or 3) directions of the combining of the two elements during manufacture, any of 1)-3) will be considered to meet the claim language.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 7-8 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Weirich et al '460.

Claim 7: see definitions in paragraph 11, supra, Figures 4 and 6-8, i.e. the mechanical fastening system is 72, the first fastening component is 22, the second fastening component is 24, the first component 22 is a multidirection stretchable nonwoven loop material, see col. 14, lines 59-62 and col. 18, lines 35-49(and thereby Freeland et al '120, at col. 17, lines 53-56). See also col. 3, lines 59-61 with regard to the preamble of claim 7.

Claim 8: in addition to the portions of '460 cited with respect to claim 7, see Figures 1-2 and col. 5, line 65-col. 6, line 40.

Claim 13: see discussion of claim 7 supra and the preamble of claim 7 of the '460 reference. The language of the whereby clause recites properties, functions or capabilities of the claimed structure. As discussed supra, the '460 reference includes all the claimed structure. Therefore there is sufficient factual evidence for one to conclude that the claimed properties, functions and capabilities would also be inherent in the same structure of the '460 device. See MPEP 2112.01.

14. Claims 1-2, 4-5, 7-11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hetzler '136.

Claims 1 and 4: see definitions in paragraph 11, supra, col. 11, line 14-col. 12, line 2 and Figure 3, i.e. teaches a mechanical fastening system with a first fastening component of loop material and a second fastening component of hook material, see also film 10, col. 7, lines 20-36, layer 30, col. 9, lines 54-56, col. 8, lines 34-39 and col. 9, lines 26-36, i.e. the loop material is stretchable material being made of a necked, i.e. neck stretched, material laminated to an elastic material and the laminate is stretchable in multiple directions.

Claim 10: see discussion of claims 1 and 4 and also col. 10, line 65-col. 11, line 13 and Figure 3, i.e. teaches a liquid permeable liner or inner layer, an outer layer and an absorbent layer therebetween. The remarks with regard to properties, functions and capabilities in the whereby clause set forth in paragraph 13 are reiterated here with regard to the '136 reference.

Claims 2, 5 and 11: see again col. 9, lines 26-36, i.e. support layer is a cross direction extensible nonwoven material attached as a facing in a stretch bonded laminate to produce a two way stretch laminate.

It is noted that claims 2 and 5 are product by process claims. See MPEP 2113. The '136 reference happens to teach the process set forth in these claims used to make the product. However it is noted that it is the structure of the end product not the process of making the end product which determines patentability, i.e. claims would be unpatentable even if the prior art did not teach the same process of making as long as the prior art taught the same structure as that of the end product of such claimed process.

Claims 7 and 13: see discussion of claims 1-2, 4-5 and 10 supra.

Claim 8: see col. 9, lines 26-36 and col. 9, line 56-col. 10, line 51.

Claim 9: see col. 9, lines 26-26 and col. 9, line 56, i.e. crimping causes gathering, i.e. "pregathered".

15. Claims 1-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Morman et al'600.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claims 1 and 4: see col. 16, lines 54-60 and Figure 4, i.e. teaches a mechanical fastening system with a first fastening component of loop material and a second fastening component of hook material, see also, e.g. col. 4, lines 3-41, i.e. the loop material is stretchable material made of a neck stretched material bonded to an elastic material to form a laminate with multidirectional stretch. The remarks with regard to properties, functions and capabilities in the whereby clause set forth in paragraph 13 are reiterated here with regard to the '600 reference.

Claims 2-3 and 5-6: see again col. 4, lines 3 et seq. See discussion of product by process claims in paragraph 14 supra which discussion is reiterated here with regard to the '600.

Claims 10-12: see discussion of claims 1-6 and col. 16, lines 36-49 and Figure 4, i.e. teaches an inner liquid permeable layer, an outer layer and an absorbent layer therebetween.

Claims 7-8 and 13: see discussion of claims supra and, e.g., col. 5, lines 45-47.

Claim 9: see col. 4, lines 14 and 54 et seq, i.e. rugosities are "pregathering".

Claim Rejections - 35 USC § 102/103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

17. Claims 3, 6 and 12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hetzler et al '136.

With regard to claims 3, 6 and 12, see discussion with regard to product by process claims in paragraph 14 supra. Also see col. 9, lines 26-36 and col. 9, lines 54-56, i.e. it is the Examiner's first position that the '136 reference teaches stretching the nonwoven facing material in a machine direction so as to neck down in the cross machine direction because it teaches the support layer being a necked material which is extensible in the cross machine direction and that the '136 reference teaches attaching the facing material to the elastic film stretched in the machine direction so that the laminate gathers in the machine direction because it teaches the film can be stretched during bonding to such a support layer and that such results in machine direction stretch. In any case, i.e. the Examiner's second position, to make a support layer of necked material which layer is also extensible in the cross machine direction as taught by '136 by stretching the support layer in the machine direction so as to neck down in the cross direction, if not already, and to make the elastic film layer stretched in the machine direction and attached to the necked support layer when stretched as taught by '136 so as to gather the combination in

the machine direction, if not already, would be obvious to one of ordinary skill in the art because it is well known that stretching a neckable material in the machine direction creates neck down , i.e. extensibility, in the cross machine direction of the necked material and that stretching an elastic layer in a machine direction and attaching it to another layer while it is stretched will cause gathering of the combination in the machine direction so as to make the laminate extensible in the machine direction and the desire of '136 to have a necked support layer which is also extensible in the cross machine direction and an elastic layer attached to the support layer in the stretched condition to create a laminate which laminate is also stretchable in the machine direction.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The '002 reference, a reference cited by Applicant, at col. 9, lines 27-61 teaches a laminate but does not clearly teach whether the elastic layer is stretchbonded or not. The '084, '781, '028 and '662, the latter cited by Applicant, teach the claimed loop material and use as an outer cover but does not teach use as a loop material of a fastener. These references also teach it is well known to create extensibility in the cross direction of a necked material by the method of claims 3, 6 and 12 and a gathered laminate by the method of claims 3, 6, and 12. The '041 reference cited by Applicant teaches a laminate of non elastic materials, i.e. not stretch bonded as defined in the instant application.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

K. M. Reichle

Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR